

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**CSE/TKR, Inc. d/b/a Cablevision^[1]
Employer**

and

Case No. 2-RC-22904

**International Brotherhood of Electrical Workers,
Local 363, AFL-CIO
Petitioner**

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding^[2], it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.
2. The parties stipulated and I find that CSE/TKR, Inc. d/b/a Cablevision (the Employer), a New Jersey operating company with offices located at 235 West Nyack Road, West Nyack, New York, provides broadband cable and communication services to communities in New Jersey, New York and Pennsylvania. Annually, in the course and conduct of its operations, the Employer derives gross revenues in excess of \$500,000 and purchases goods and materials valued in excess of \$5,000 directly from suppliers located outside the state of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Local 363, I.B.E.W., AFL-CIO (the Petitioner), is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and 2(7) of the Act.

5. In its petition, amended at the hearing, Petitioner seeks to represent all full-time and regular part-time field service technicians, including quality control technicians, outside plant technicians, construction technicians, audit technicians, warehouse employees and head-end technicians, employed by the Employer within the territory known as Rockland^[3] and excluding all design technicians, clerical coordinators, secretaries, customer relations coordinators, sales employees, local programming personnel, confidential employees, guards, professional employees and supervisors as defined in the Act. The Employer disagrees with both the scope and composition of the petitioned-for unit. In that regard, the Employer contends that a multi-location unit is appropriate because the Rockland operation (which is the only facility encompassed by the petition) is fully integrated with the depots in Warwick, NY and Matamoras, PA. Further, the Employer, contrary to Petitioner, maintains that the designer and clerical coordinator classifications should be included in the unit.

Overview of the Employer's Operations

The Employer provides a broad range of cable television and other telecommunications services to various communities in the New York metropolitan area. These services originate with a cable signal, which is received from a satellite. The signal is transmitted to the hub site where inside plant or head-end technicians monitor the signal strength and frequency to ensure service to customers. The signal is then transmitted via fiber optic cable through the "outside plant" which is designed by the designer, built by the construction technicians and repaired and maintained by outside plant technicians (OSP). The "customer drop" is the point from which a customer's cable is installed. The field service technicians install and maintain the "customer drop" or "tap," as well as, install or disconnect the required interior wiring for the customer.

With respect to field operations, Thomas Monaghan, vice president of field operations for New Jersey North, oversees the geographic area encompassed by Rockland,

Warwick, Matamoras, Oakland, Lodi, Hackensack, Patterson, Crest Hill, Newark, Elizabeth, Union City, Bayonne and other areas. Michael Liguori, area operations manager (AOM), is in charge of the field service and outside plant maintenance for all three locations (Rockland, Warwick and Matamoras), as well as, maintaining the actual facilities. Liguori, along with the other AOMs in the New Jersey North field operations, report to William Lee, the director of field operations, who in turn reports to Monaghan.

Liguori submits one combined financial plan for the business unit comprised of Rockland, Warwick and Matamoras. He reports productivity and safety results for all three depots in a consolidated fashion. Although his office is located in Rockland, he visits Warwick and Matamoras twice weekly. Liguori determines staffing levels and offers overtime resulting in temporary transfers among all of the field technicians at the three locations. The staffing costs fall under a single budget. In Rockland, three field service supervisors and one outside plant supervisor manage a staff of about forty-one employees. In Warwick/Matamoras, three field service supervisors and one outside plant supervisor manage a staff of about twenty-two employees. The field service supervisors at all three locations provide weekend and vacation coverage for each other. All eight supervisors from the three locations report directly to Liguori. Further, the facility technician performs handyman work at all three locations and reports directly to Liguori. Finally, two clerical coordinators stationed in Rockland and one clerical coordinator working in Warwick, all report to Liguori.

A different line of supervision exists for the inside plant technicians. In that regard, Rich Arnott directly supervises the inside plant technicians (head-end techs), three of whom work out of Warwick and three are based in Rockland. Arnott's office is located in Warwick. Arnott reports to Brian Birmingham who is the manager for inside plant for New Jersey North.^[4]

Wayne Richardson, senior vice-president for construction heads the management team for the construction technicians. Peter Odell, the director of construction, oversees all construction activities, maintenance and new facilities in New York, New Jersey, Connecticut and Matamoras, PA. Daniel Gannon, the construction manager for New Jersey North, reports to Odell.^[5] In Rockland, five construction technicians report directly to supervisor Tom Chase, who in turn, reports to Gannon. George Riddle, the only construction technician in Warwick, reports directly to Gannon.^[6] Finally, Pat Hines, the clerical coordinator for construction, reports to Gannon.

Terms and Conditions of Employment

Richard Farber, human resources director for Northern New Jersey, oversees staffing and training for North New Jersey Field Operations. The hiring procedure is uniform throughout the company, irrespective of employee classification. The applicants are initially screened by Joyce Wahl, the staffing manager for New Jersey North, at her office in Oakland, NJ. The hiring decisions are made by the local managers responsible for that potential hire, i.e., Liguori, Birmingham or Gannon, after a satisfactory background check is completed by human resources.

All employees are required to attend new-hire orientation where they are introduced to the employee handbook and personnel policies, such as safety, discrimination and harassment codes, drug policies and progressive discipline. New hire technical training, required for all field operations employees, except the designer and clerical coordinators, is conducted at a Hackensack location, regardless of the facility to which the technician is ultimately assigned.

All employees are subject to the same compensation system and employee benefit package, including the medical plan, 401K options, tuition assistance and an employee assistance program. All of the employee classifications in this case are paid on an hourly basis and have the same payday. Vacation accrual is dependent on seniority, not job classification. The personnel files for the Rockland, Warwick and Matamoras employees are kept at the Rockland facility.

Employee Classifications: Their Duties and Interchange

The record demonstrates that while they work out of separate facilities, all of the Rockland, Warwick and Matamoras technicians share identical skills, functions and working conditions.

In the course of normal day-to-day operations, each geographic area is serviced by their own field service technicians performing primarily, installation, maintenance and disconnection of cable service for customers. However, customer requests for service drive the need for manpower. Fluctuations in customer demand can create erratic spikes, which require flexibility in staffing. As an example, a Rockland field service technician, Jonathan Stuart, worked in Warwick for one week to help alleviate a temporary, excessive workload there, due to increased customer demand. Liguori

estimated that during this past September, the techs moved between the Warwick and Rockland areas about five to eight times.^[7] Similarly, based on weekend projections, the Employer offers overtime by posting a weekly sign-up sheet for the techs at all three locations. In every instance, techs have volunteered to work in another location and, therefore, Liguori's could assign techs for overtime to other locations. Notably, the Employer does not track which tech is covering a particular area because overtime is attributed to one budget for all three locations. In sum, Liguori stated that due to spikes in customer demand, overtime needs, emergency situations and employee absences, he relies on the interchange of the field service techs between these three locations to fill staffing requirements.

On a typical day, the field service techs get their routing list from their supervisor's office or in the tech room. The routing list contains the specific work orders with the customer's name, address and the services required. The techs check their vans for supplies and obtain additional stock and equipment from Logistics, which is the warehouse.^[8] The techs sign an asset acknowledgement form with their name and number to track the equipment that was issued to them that day. If the techs finish early, they will either call dispatch for "pool jobs" or they can call a fellow tech and offer their assistance. At the end of the shift, the techs return to the office, turn in their equipment to Logistics and submit their paperwork to their supervisors. The supervisors verify the finished work and complete the timesheets for the techs.

Four quality control technicians, who are all based in Rockland, check the quality of the work performed by the field service techs for all three locations. The Employer considers the quality control techs to be a subset of field service and they are paid the same wage scale as field service techs.^[9]

The outside plant technicians (OSP) repair and maintain the hard feeder cable, which is strung from pole to pole. Like the field service techs, OSP are broken up into geographic areas throughout all three locations and usually handle referrals in their assigned geographic area. Apart from customer referrals, OSP perform routine equipment maintenance tests. They wear the same uniforms and go through the same check-in procedure as the field service techs. They also pick up their material from

Logistics. OSP use maps, which are generated by the Design Department and are the blueprints of the system. OSP interact with Dan Bromberger, the sole designer, to obtain maps, correct distances in the maps or refer work for areas that need to be redesigned. At the end of their shift, OSP close out their work through dispatch and hand in their timesheets. OSP conduct separate meetings from the field service techs, although, the record contains instances of cross-training for the field technicians and OSP. In that regard, OSP might work overtime or substitute for a field service tech. Some further evidence of interchange between OSP and other classifications was illustrated when several Rockland OSP mentored and assisted construction techs for about one month when the Matamoras system was rebuilt. Equally exceptional is the instance when two Rockland OSPs covered standby shifts for Warwick OSPs who had taken extended FMLA leave. The overall record does not demonstrate regular interchange among the OSP at the different locations.

Five construction techs are assigned to Rockland and as stated above, George Riddle is the sole construction tech working in Warwick. Even though construction in Warwick and Matamoras is generally subcontracted, the Rockland construction techs sometimes work in those areas. Further, on September 10, 2004, the Employer instituted a mandatory standby requirement, so that theoretically, the Rockland construction techs could be called to work in any area within New Jersey North. ^[10] Riddle is invited to attend staff meetings with the Rockland crew.

The designer receives requests from field departments for new installations. He also deals with requests from utilities regarding road widening or new sewer lines, which necessitate moving the underground cables. While he rarely works in the field, Bromberger sometimes meets with the contractor to survey the property from which he draws a blueprint, including a bill of materials required for the job. Depending on the requirements of the workload, the referral is funneled to either construction techs or OSP.

The inside plant technicians monitor, maintain and repair any issues at the head-ends or the hub sites. Inside plant technicians, as the name suggests, do not perform field work and only move between head-end facilities for special projects. As an example, the inside techs rotated through locations when the Greenville hub site was being built. Mark Sullivan, a head-end tech, testified that he frequently has contact with OSP and he speaks to field service techs on average, three to five times per week.

The clerical coordinators also do not work in the field but, they do not possess any technical expertise. In construction, Pat Hines is the clerical coordinator for Rockland, Warwick and Matamoras. She works in the Rockland office three days a week and the

Bergen office two days a week.^[11] Her responsibilities include logging all incoming phone calls from builders, dispatch or OSP clericals, which generally create work orders. Hines may speak directly to a project supervisor or construction technicians; however, she rarely interacts with other techs. She reconciles production reports or “dailies” from which she creates spreadsheets to track the progress of construction projects for each geographic area. Ultimately, these reports provide the data for a consolidated regional report.^[12] In a normal forty-hour workweek, about 10% of her time is spent dealing directly with construction technicians; the other 90% of her time is spent doing clerical and office work.

With respect to the other three clerical coordinators, Liguori testified that while they have basic clerical responsibilities, they regularly interact with the techs by adjusting and submitting their timesheets, reporting breakage or loss of Nextel devices, tracking vacation requests, ordering uniforms and dealing with local vendors regarding truck maintenance. June Van Dunk covers field service techs and Karen Byrnie is responsible for OSP in Rockland. Denise Grady is the clerical coordinator in Warwick and she gathers data from the field service techs and OSP for the Warwick and Matamoras locations. The record demonstrates that in addition to routine administrative duties, their basic function is inputting productivity data. Michael Daley, a field service tech, testified that his occasional interactions with the Clerical Coordinator concerned administrative issues not related to his job duties or assignments. Similarly, Joseph Cacuzza, an OSP, testified that the Clerical Coordinators do not assist him with his work.

Distance Between Locations

The Rockland and Warwick facilities are approximately 30 miles apart, as are the Warwick and Matamoras facilities. Warwick is approximately midway between Rockland and Matamoras.

Bargaining History

The Union’s suggestion that a prior Decision and Direction of Election in Case No. 34-RC-1701, is dispositive of the unit issues raised herein must be rejected. In that case, the Regional Director found that the two head-end technicians at the Rockland facility should be included in the unit, contrary to the Employer’s assertion that they did not share a community of interest with the other classifications in the petitioned-for unit. In

the instant case, inside plant or head-end technicians are encompassed by the petitioned-for unit and the Employer does not dispute that their inclusion is appropriate.

With respect to the scope of the unit, the parties did not litigate whether a multi-location unit was appropriate in the prior case. Accordingly, I need not reach the issue as to whether a reorganization of the Employer's business has occurred since 1999, because the prior Decision and Direction of Election did not address the single or multi-location issue. Finally, while an election was conducted, it appears that the Union was not certified and, therefore, the parties do not have a bargaining history relevant to this proceeding.

DISCUSSION

The Applicable Legal Standards

Section 9(b) of the Act states that the "Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof."

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or even the most appropriate unit. Rather, the Act requires only that the unit be an appropriate unit. The Board has held that in determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994). And, the Board generally tries to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees. *Bartlett Collins Co.*, 334 NLRB 484 (2001).

The Petitioner has requested a unit composed of technicians who report to, work at, or are dispatched from the Employer's Rockland facility. To the contrary, the Employer claims that a multi-facility unit of the technicians working out of or at Rockland, Warwick and Matamoras facilities comprise the appropriate scope of the unit.

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood*, 323 NLRB 665,666 (1997); *J&L*

Plate, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). In *Trane, an Operating Unit of American Standard Companies*, 339 NLRB No. 106 (2003), the Board noted that while the party opposing the single-facility unit has a heavy burden, the Board has never held that to rebut the presumption a party must proffer overwhelming evidence of the complete submersion of the interests of the employees at the single location, nor is it necessary to show that the separate interests of the employees sought have been obliterated.

To determine whether the single facility or location presumption has been rebutted, the Board examines a number of community of interest factors including (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. *J&L Plate, Inc.*, supra at 429; *R & D Trucking, Inc.*, 327 NLRB 531 (1999).

In the instant case, the record evidence amply shows that the field operations in Rockland, Warwick and Matamoras are highly integrated. These three locations comprise one business unit for the New Jersey North field operations, headed by Area Operations Manager Liguori, who makes all hiring decisions, determines staffing levels that require temporary transfers and overtime work, manages a combined budget, and submits consolidated productivity reports and safety results. Similarly, manager Rich Arnott provides centralized control over the inside plant techs at both the Rockland and Warwick facilities. In addition, the employees at all three locations receive the same technical training and perform identical functions. Further, the terms and conditions of employment are the same for all of the employees with respect to the personnel policies, the compensation system and the benefit package. Accordingly, the Employer has rebutted the single-facility presumption because there is functional integration and coordination between locations. Further, there is common management and interchangeable first-line supervision at all three locations and centralized control over labor relations. Finally, similarity of skills, duties and other terms and conditions of employment between employees working at or out of these three facilities outweighs any factors tending toward a finding of a separate identifiable geographic area, such as the geographical distance between the facilities and the contention that interchange among employees is sporadic and voluntary. *Judge & Dolph, Ltd.*, 333 NLRB 175, 185 (2001). Based on the above, I conclude that a multi-location unit constitutes a unit appropriate for collective bargaining.

The Employer, contrary to Petitioner, would include the designer in the unit. While the designer rarely engages in field work, neither do the inside plant technicians who are included in the petitioned-for unit. The designer shares a community of

interest with the petitioned-for unit because he regularly interacts with OSP and the Construction Techs. His work is fully integrated in the production process because his maps guide the work of the field operations and inside plant/head-end techs. *Harron Communications, Inc.*, 308 NLRB 62 (1992). Further, the designer starts at the same pay grade as the field service and audit techs. Finally, the employee is this classification would otherwise be excluded from any other unit and would thus be denied rights guaranteed under the Act. Accordingly, the designer possesses a sufficient community of interest with other unit employees to warrant his inclusion therein.

Finally, regarding the clerical coordinators, the Board has recently reiterated that the distinction between “plant clericals” and “office clericals” is rooted in community-of-interest concepts, but is occasionally difficult to discern. *Caesar’s Tahoe*, 337 NLRB 1096, 1098 (2002). In *Palagonia Bakery Co.*, 339 NLRB No. 74 (2003), the Board stated that clericals whose principal functions and duties relate to the general office operations and are performed within the office itself are office clericals who do not have a close community of interest with a production unit. The crucial element in finding functional integration with the production process is the presence of significant direct contact with the production employees. In the instant case, Michael Daley, a field service technician, and OSP Joseph Cacuzza both testified that their contact with the clerical coordinators was minimal and involved purely administrative matters. While some evidence supports that the clerical coordinators may do troubleshooting with customers by telephone in order to avoid the necessity of a service call, the clericals do not have technical expertise, use tools, wear uniforms or spend time in the field. Accordingly, Petitioner has established, and I find, that the clerical coordinators do not share a community of interest with the other unit employees to warrant their inclusion in the unit.

CONCLUSION

Based upon the foregoing^[13], I find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

INCLUDED: All full-time and regular part-time field service technicians, including quality control technicians, outside plant technicians, construction technicians, designers, audit technicians, head-end technicians, warehouse employees or logistics technicians, employed by the Employer at its Rockland, Warwick and Matamoras facilities.

EXCLUDED: All other employees, including clerical coordinators, secretaries, customer relations coordinators, sales employees, local

programming personnel, confidential employees, guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and

^[14] Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of the Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

^[15] Those eligible shall vote on whether or not they desire to

be represented for collective bargaining purposes by the International Brotherhood of Electrical Workers, Local 363, AFL-CIO.

Dated at New York, New York,
October 26, 2004

/s/

Elbert F. Tellem
Acting Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code: 420-6280
440-3300

^[1] At the hearing, Petitioner amended the petition to accurately reflect the correct name of the

Employer.

[2]

The briefs submitted by the Employer and Petitioner have been carefully considered.

[3]

This area is comprised of the following twenty-two communities: Arden, Mahwah, Chestnut Ridge, Hillburn, Tuxedo Park, Sloatsburg, South Fields, Suffern, Tuxedo, Montvale, Airmont (Village), Clarkstown, Grandview-on-Hudson, Montebello, New Hempstead, Nyack, Orangetown, South Nyack, Spring Valley, Upper Nyack, Wesley Hills and West Nyack.

[4]

It appears that Birmingham functions in a manner similar to an "AOM" for inside plant techs and is the corollary in his area to Liguori in field operations.

[5]

Gannon appears to be the corollary in construction to Liguori and Birmingham.

[6]

No construction technicians are based in Matamoras. Generally, the construction in Warwick/Matamoras is subcontracted.

[7]

Michael Daley, a Field Service Technician assigned to Rockland, testified that he has never worked with techs from Warwick or Matamoras.

[8]

Three warehousemen in Rockland and two warehousemen in Warwick report to direct supervisors at those locations who report to a different management team, other than field operations. The central distribution warehouses are located in South Jersey and Long Island. Supplies, such as, wire, connectors, cable boxes and cable modems are regularly transferred among Rockland, Warwick and Matamoras. The warehousemen are included in the stipulated unit.

[9]

While no record evidence was adduced regarding their functions, the Audit Technicians are included in the petitioned-for unit.

[10]

The record examples cite hypothetical emergency situations like damage caused by storms so that all available personnel would be called in to repair the system.

[11]

The record does not disclose the geographic areas encompassed by the Bergen office.

[12]

The record is unclear as to whether the report covers New Jersey North or Rockland, Warwick and Matamoras.

[13]

Petitioner has indicated a desire to proceed in any unit found appropriate.

[14]

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(1) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules. requires that the Employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

[15]

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **November 2, 2004**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

[16]

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **November 9, 2004**.